August 23, 2019

Chairman Pai
Federal Communications Commission
445 12th Street, SW
Washington, DC 20544

Re: Third Further Notice of Proposed Rulemaking, Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59, WC Docket No. 17-97, 84 Fed. Reg. 29,478 (June 24, 2019)

Dear Chairman Pai:

Through industry-leading technology, analytics and engagement solutions, HMS saves billions of healthcare dollars annually while helping consumers lead healthier lives. HMS provides a broad range of services, including population health management, to healthcare programs, including the Children's Health Insurance Programs (CHIP), Medicaid, Medicare, and the Veterans Administration. Today, our comments focus on generating awareness of, and protection for, the types of healthcare related calls that occur today and should continue unfazed by any efforts to stop illegal robocalls.

Make no mistake that HMS shares the Federal Communication Commission's (FCC) strong desire to eliminate illegal, annoying and harmful robocalls. Doing so protects consumers and legitimate callers and further ensures the reliability of a valuable communications channel in the marketplace. While it is clear that the FCC's June 6, 2019 Declaratory Ruling and its June 24, 2019 Further Notice of Proposed Rulemaking (FNPRM) are intended to curb abusive and harmful robocalls, HMS shares in the FCC's concerns that legitimate calls may be blocked if future rules are not carefully crafted [1]. Efforts to curtail illegal or unwanted robocalls should not interfere with the authorized call reminding a diabetic patient to refill his or her life-sustaining insulin medication, the call informing a new mother how to schedule a well-child visit for her newborn, or the millions of other appropriate (and often automated) calls that healthcare providers and payers place to consumers every day. Therefore, HMS urges the Commission to adopt a multi-faceted approach to protect legitimate healthcare related calls while concurrently pursuing the methods outlined in the June 6th Declaratory Ruling and this FNPRM to stop illegal robocalls.

1. **Sequence and Coordinate Call Blocking Efforts**

To begin, HMS suggests that the Commission carefully coordinate the June 6 default call blocking programs with the implementation of SHAKEN/STIR. We urge the Commission to first work through the SHAKEN/STIR implementation in line with the recommendations below. Once SHAKEN/STIR is fully implemented, we ask the FCC to only allow default call blocking programs to block those calls not authenticated under SHAKEN/STIR, or block only those calls that the voice service provider has a high

[1] *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Notice of Proposed Rulemaking and Notice of Inquiry, March 23, 2017, ¶52.

degree of certainty are in fact illegal. As it stands, the June 6th Declaratory Ruling allows voice service providers to block unwanted calls based upon "reasonable analytics" which has the potential to be a vague and unworkable standard. The Ruling further suggests that such reasonable analytics may include, but not be limited to, large bursts of calls, low call completion ratios, sequential dialing patterns, and low average call duration. Some of those factors though may result in blocking legal, legitimate calls. By clarifying that service providers are not permitted to unilaterally block calls that have been SHAKEN/STIR authenticated, the Commission increases the likelihood that appropriate calls will reach their intended and rightful targets.

2. **Broaden Category of Calls Deemed Critical to Include Healthcare Related Calls**

HMS understands that communications deemed critical should be limited to avoid the creation of loopholes for unscrupulous callers and actually alleviate the consumer burden of robocalls. The Commission rightfully proposes to qualify 911 and other public safety calls as critical calls given their intrinsic public interest and good. It is important to recognize, however, that healthcare calls also serve a broad-based public health and safety interest and should also qualify as critical calls.

Medicaid and Medicare collectively provide comprehensive care to over 120 million Americans, including pregnant women, children, disabled and elderly. Taxpayers fund these programs and have a vested interest in their efficient and safe operation. HMS conducts telephonic and SMS text based outreach to more than 20 million Medicaid and Medicare enrollees each year. Only consumers with a known relationship to Medicaid and/or Medicare who provide prior consent are contacted. As exemplified below, such outreach is intended to educate and engage consumers on their healthcare choices, remind consumers of ways to address their critical healthcare needs, improve quality and outcomes, and avoid unnecessary and improper healthcare spending.

These healthcare related calls are rooted in the same public interest and good as the public safety calls deemed critical in the FNPRM. For this reason, HMS respectfully urges the Commission to deem "healthcare related calls" as critical calls. At a minimum, the definition of "healthcare related calls" should include those calls made by Covered Entities and their Business Associates, as those terms are defined under HIPAA. However, we discourage the Commission from being unnecessarily restrictive with regard to what constitutes healthcare related calls given ongoing transformations in the healthcare industry and regulatory environment spanning, technology, consumerism, value based care and more. Being too prescriptive on what qualifies as a healthcare related call may not align with, or worse yet, may harm these otherwise positive industry-wide changes.

Below are some examples of the types of critical healthcare messaging that could very well be restricted—or stopped altogether—if healthcare calls are not categorized as critical calls:

Natural Disaster and Healthcare Related Recalls

In the event of a natural disaster, such as a hurricane, wildfire, flood or earthquake, timely and succinct healthcare communications are critical to ensuring continuity of care and management of chronic conditions. As a representative example, in advance of Hurricane Irma in 2017, HMS conducted targeted telephonic outreach to over 600,000 at-risk Medicare patients in the affected geographic areas who were on key, life-saving medications such as insulin, anti-seizure, HIV, and chemotherapy to inform them of permissible early refills, thus avoiding post Hurricane delays and other complications.

Similarly, when healthcare products, including pharmaceuticals and durable medical equipment are recalled, timely and successful calls are critical to ensuring public health and safety. HMS recently delivered timely telephonic notifications on behalf of a national pharmacy to individuals impacted by a pharmaceutical recall.

In both aforementioned emergent circumstances, outreach was conducted and delivered within 24-72 hours, avoiding harmful consequences resulting from communication delays. Any attempts to stop unwanted and illegal calls should not harm or delay critical healthcare related communications.

Vaccination Outreach

More than 45 million children have coverage through Medicaid and CHIP[2]. Immunizations for this population remain a top health priority especially as the U.S. grapples with recent measles outbreaks and new data reveals increasing rates of immunization exemptions[3]. The Centers for Medicare and Medicaid Services (CMS) child and adult health care quality measures, as well as the 2018 Medicaid scorecard include vaccination rates as a key metric and are further testaments to the priority CMS has placed on vaccinations within government-sponsored programs[4]. Today, HMS works with CHIP, Medicaid and Medicare programs and plans to strategically place calls to educate and inform enrollees about immunizations that are available to them under these programs. In our experience, these direct calls to members have increased immunization rates by an average of 30%. These types of beneficial healthcare outreach calls should not be caught in an overly broad dragnet of efforts to stop illegal and unwanted calls.

Chronic Disease Management

Common and costly chronic diseases include diabetes and cardiovascular conditions. Diabetes affects more than 9.4 million Americans with higher indications among Medicaid and Medicare enrollees[5]. According to a September 2017 study, 18.9% of Medicare enrollees had type 2 diabetes, while 2.3% had type 1.[6] Through direct patient engagement and outreach, HbA1c testing rates, a key step to manage diabetes, can be improved by upwards of 5%.

Twenty eight percent of Medicaid members have cardiovascular disease and Medicaid enrollees are more likely to have cardiovascular conditions than those who have other types of health insurance coverage. Medication adherence for individuals with cardiovascular conditions can be improved by 25% through patient centered, multi-channel, intelligent patient interventions that includes phone calls.[7] However, if healthcare related calls are not deemed as critical calls for purposes of this FNPRM, then

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[2] Center for Children & Families (CCF), Georgetown University Health Policy Institute, Fact Sheet: Medicaid's Role for Young Children, (December 2016). https://ccf.georgetown.edu/2016/12/13/fact-sheet-medicaids-role-for-young-children/

[3] Bloomberg Government, *Vaccine Exemptions Rose For Years Ahead of Measles Outbreak*, (August 20, 2019).

[4] Centers for Medicare and Medicaid Services (CMS), *Immunizations for Adolescents, Age 13 (Combination 1)*, (FY 2017). https://www.medicaid.gov/state-overviews/scorecard/state-health-system-performance/prevention-and-treatment/immunizations-adolescents-combination/index.html

[5] American Diabetes Association, *Statistics about Diabetes*, (2015). http://www.diabetes.org/diabetes-basics/statistics/

[6] CMS Medicare Current Beneficiary Survey, *Diabetes Occurrence, Costs, and Access to Care among Medicare Beneficiaries Aged 65 Years and Over*, (September 2017). https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/MCBS/Downloads/Diabetes_DataBrief_2017.pdf

[7] American Heart Association, *FACTS CRITICAL COVERAGE FOR HEART HEALTH: Medicaid and Cardiovascular Disease*, (October 2016). https://www.heart.org/-/media/files/about-us/policy-research/fact-sheets/ucm_488870.pdf?la=en&hash=F95F134D9B71145FF6F15F2CE2FF0247B355B570

these calls may be blocked and the improved quality, outcomes and patient experience that result from such calls would be lost.

Compliance with Federal Law

In accordance with regulations finalized in May 2016, Medicaid managed care plans, the dominant delivery model in Medicaid covering more than 70% of Medicaid members nationally, must conduct health risk assessments of all enrollees within 90 days of enrollment.[8] Health risk assessments identify physical, emotional, socioeconomic and lifestyle health factors that subsequently inform the development of personalized care plans. Given the transitory nature of the Medicaid population and the complexity of health risk assessments, many Medicaid managed care plans have abandoned traditional mail and turned instead towards telephonic outreach to conduct these required health risk assessments. Through our direct experience with conducting these types of telephonic outreach campaigns for Medicaid plans, HMS has seen a 400% increase in participation and improvements in care management and outcomes. These types of important healthcare communications should also qualify as critical for purposes of the FNPRM.

Additional Healthcare Related Communications

Additional critical healthcare related communications include appointment reminders and scheduling, prescription notifications, preventive and wellness information, hospital discharge instructions and follow up intended to reduce costly and unnecessary readmissions, welcome and onboarding calls to new members, and renewal notifications and instructions. All such healthcare related communications should be on a critical call list.

3. Ensure Call Blocking Transparency

Consumers and callers have a right and need to know which calls are blocked for any reason, albeit SHAKEN/STIR or any other call blocking effort. As suggested by other commenters, HMS also requests that voice service providers give notice via an intercept message or special information tone that conveys a call has been blocked. We ask the FCC to standardize these notifications, which should minimally include which calling number was blocked from which receiving number, and contact information for the call recipient or caller to leverage in the event of incorrect call blocking.

Furthermore, the FNPRM inquires whether the Commission should create a mechanism to provide information to consumers about the effectiveness of providers' robocall solutions. Minimally we encourage the FCC to create transparency in the outcome of this FNPRM as it intends to with the FCC's June 6 Declaratory ruling, which directed Commission staff to prepare reports no later than 12 and 24 months after Federal Register publication on the state of deployment of robocall blocking tools. As such, we strongly encourage the FCC to minimally publish annual metrics by voice service providers on:

- Total number of calls properly blocked;
- Total number of calls improperly blocked; and
- Statistics on redress, including timeliness of redress resolution and final disposition of redress.

4. Instill Call Recipient and Caller Protections

As SHAKEN/STIR and default call blocking programs are implemented, it will be imperative to include a consistent and effective due process approach for recipients and callers who were wrongly blocked.

[88] See 42 C.F.R. §438.208.

HMS thanks the FCC for its consideration of redress processes in the June 6 declaratory ruling, which specifically includes a path through voice service providers or a petition for declaratory ruling directly with the Commission. HMS requests the FCC further standardize call recipient and caller due process by:

- Requiring voice service providers to remove erroneous blocks within 24 hours of notification, or in as timely and efficient of a manner as reasonable, and at no charge to the call recipient or caller. Indeed, voice service provider call blocking programs should not enjoy significantly greater privileges than healthcare callers who are bound by the 2015 Omnibus TCPA Order[9] to **immediately** honor consumer opt out requests.
- Instilling a two-tier redress process that starts with voice service providers and allows a right of appeal directly with the FCC. This affords call recipients and callers a formal and expedient process to seek FCC intervention and resolution if their redress is not resolved timely by voice service providers, remains unresolved, is resolved unfavorably to one party, or received favorable adjudication yet call blocking continues.

5. Create Balanced Safe Harbors

HMS appreciates the FCC's measured approach to applying safe harbors for calls that fail SHAKEN/STIR authentication only. We believe these safe harbors should be afforded only when SHAKEN/STIR is fully implemented. Offering broader protections for additional call blocking efforts at this time is premature. We must first understand the full effects of SHAKEN/STIR before extending safe harbors to other call blocking efforts. Consumers and legitimate callers will be severely disadvantaged if safe harbors from strict liability for all good faith efforts to curb abusive robocalls are granted to voice service providers at this time. Furthermore, granting broad safe harbors is incongruent with the TCPA, which can potentially subject callers to penalties ranging from $500-$1500 per call.

Conclusion

HMS applauds the Commission's dedication to combating illegal robocalls. As emphasized throughout our commentary to the FNPRM, healthcare related calls are in the interest and good of the public. These calls must be protected as the Commission adopts policies to halt illegal robocalls. HMS remains committed to working with the FCC to develop policies that block illegal calls while ensuring that healthcare related calls are not harmed. Our comments hereto are intended to achieve both. Thank you for the opportunity to comment. Should you have any questions or wish to discuss, please do not hesitate to contact me at (202) 448-2024 or kballantine@hms.com.

Sincerely,

Kristen Ballantine, VP Government Relations

[9] Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al., Declaratory Ruling and Order, 30 FCC Rcd 796.